NO. 49624-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION TWO

STATE OF WASHINGTON
v.
KHADIM GUEYE

ON APPEAL FROM
THE SUPERIOR COURT FOR PIERCE COUNTY
STATE OF WASHINGTON

The Honorable Philip Sorensen, Judge

APPELLANT'S OPENING BRIEF - CORRECTED

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RULES, STATUTES, AND OTHERS

A. ASSIGNMENTS OF ERROR

1. The state failed to prove Gueye intended to commit an assault.

2. The state failed to prove Gueye's spitting was offensive.

3. The state failed to prove Gueye's spitting was done with unlawful force.

4. Gueye was denied his right to effective assistance of counsel where counsel failed to request a lesser instruction on unlawful transit conduct.

5. The state failed to prove that Gueye committed the crime of criminal trespass.

Issues Presented on Appeal

1. Did the state fail to prove Gueye intended to commit an assault when in a semi-incoherent state, he spat on a transit driver?

2. Did the state fail to prove that when Gueye was in a disadvantaged state of mind and spat on the transit driver, that the act of spitting was offensive to an ordinary person where the witness's testimony did not express any sense of

offense?

3. Did the state fail to prove that when Gueye was in a disadvantaged state of mind and spat on the transit driver, that the act of spitting was done with unlawful force where the witness's testimony did not express any sense of alarm?

4. Did the state fail to prove the elements of criminal trespass in the Tacoma Dome Bus Station, where there was no evidence that Gueye knew that he was in an excluded area?

5. Did the state fail to prove the elements of criminal trespass in the Tacoma Dome Bus Station, where there was no evidence that Gueye remained unlawfully in an excluded area?

6. Was Gueye denied his due process right to effective assistance of counsel where his attorney failed to request a lesser included instruction to assault in the third degree where the evidence supported both the legal and factual prongs for obtaining the lesser instruction, unlawful transit conduct?

B. STATEMENT OF THE CASE

The sequence of events is not entirely clear from the record due to a lack of notation of the time each event occurred. The record appears to describe the following. Khadim Gueye was first spotted on video surveillance by Tacoma Dome Station transit security employee Joseph Mager. RP 30-31. Mager saw Gueye lying on the floor in the bus station with his shoes off. RP 30-31. Mager called public safety to conduct a safety check. Id. Pierce County public safety officer Kenny Gainey responded. RP 33.

Gainey had trouble waking Gueye who was difficult to understand. RP 35. Gueye's DOC sentencing report indicated that Gueye has significant drug and alcohol abuse issues. CP 53-57.

Sergeant Paul Strowzewski heard the report of a person sleeping at the bus island and he too responded to the scene. RP 41-42. Strowzewski handcuffed Gueye after Gueye threatened to shoot him. RP 36-37, 44. Strowzewski told Gainey to write a civil exclusion for Gueye and released Gueye with the admonishment to leave the premises. RP 46-47. The civil exclusion was not read or submitted as part of the trial record. Gainey explained that civil

exclusion: “it's a civil thing to say, pretty much -- more or less, it says you can't be on transit property for a certain amount of days.” RP 35.

Some minutes after this incident Gueye cut in line and attempted to board a Pierce County transit bus. RP 26. The bus driver Cynthia Kerrigan told Gueye that he had been “denied services for the day”. RP 51-52. In response, Gueye turned around, grumbled, and twice spat on Kerrigan’s face. RP 51-52. Kerrigan did not express any distress or offense. Strowzewski described being spat upon as “nothing pleasant”. RP 45.

Less than 20 minutes from this incident, Pierce County deputy Joseph McDonald responded to a message that a person had been excluded from the Tacoma Dome Station. RP 54. McDonald initially saw Gueye leaving the premises on foot. RP 55. McDonald decided to look for Gueye.

> Well, we were looking for him. He was last seen walking into the parking garage, and then I found him up on another level near the Link station sitting down.
> Q: And who owns that property?
> A: Pierce Transit owns the property.

RP 55.

When McDonald made contact with Gueye, Gueye was not in the Bus Transit facility but rather on a parking level for the Link Station. RP 39.

McDonald arrested Gueye for malicious harassment because Gueye threatened to kill him. RP 56. Gueye was charged with assault in the third degree against the bus driver; two counts of felony harassment against the police officers; and criminal trespass. CP 7-9. Gueye was convicted of criminal trespass and assault in the third degree, but acquitted on the two counts of felony harassment. CP 44-47, 62-78.

This timely appeal follows. CP 84.

C. ARGUMENTS

1. THE STATE FAILED TO PROVE THE ESSENTIAL ELEMENT OF AN ASSAULT IN THE CHARGE OF ASSAULT IN THE THIRD DEGREE.

The state failed to prove that Gueye's act of spitting was done with unlawful force and that it was offensive.

a. Standard of Review

In every criminal prosecution, due process requires that the state prove, beyond a reasonable doubt, every fact necessary to constitute the charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Houston-Sconiers*, 188 Wn.2d 1, 15, 391 P.3d 409 (2017) (*citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

All reasonable inferences from the evidence are drawn in favor of the State and interpreted "most strongly" against the defendant. *Salinas*, 119 Wn.2d at 201. Furthermore, "[a] claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Houston-Sconiers*, 188 Wn.2d at 15 (*citing Salinas*, 119 Wn.2d at 201).

"Circumstantial evidence and direct evidence are equally reliable." *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970

(2004). Circumstantial evidence "is sufficient if it permits the fact finder to infer the finding beyond a reasonable doubt." *State v. Askham*, 120 Wn. App. 872, 880, 86 P.3d 1224 (2004) (*citing State v. King*, 113 Wn. App. 243, 270, 54 P.3d 1218 (2002)). The appellate court "defer[s] to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *Thomas*, 150 Wn.2d at 874-875.

Sufficient means more than a mere scintilla of evidence; there must be that quantum of evidence necessary to establish circumstances from which the jury could reasonably infer the fact to be proved. *State v. Fateley*, 18 Wn. App. 99, 102, 566 P.2d 959 (1977). The remedy for insufficient evidence to prove a crime is reversal, and retrial is prohibited. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005) (Smith I).

"[A] criminal defendant may always challenge the sufficiency of the evidence supporting a conviction for the first time on appeal." *State v. Sweany*, 162 Wn. App. 223, 228, 256 P.3d 1230 (2011), *aff'd,* 174 Wn.2d 909, 281 P.3d 305 (2012) (*citing State v. Hickman*, 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998)); see also RAP

2.5(a)(2) (stating "a party may raise the following claimed errors for the first time in the appellate court ... failure to establish facts upon which relief can be granted. . . ."). "A defendant challenging the sufficiency of the evidence is not obliged to demonstrate that the due process violation is 'manifest.'" Id.

b. Assault.

To find Gueye guilty of assault in the third degree, the jury had to find that Gueye assaulted a transit driver. RCW 9A.36.031(1)(b). The trial court defined assault as follows:

> An assault is an intentional touching of another person, with unlawful force, that is offensive, regardless of whether any physical injury is done to the person. A touching is offensive, if the touching would offend an ordinary person who is not unduly sensitive.

CP 20-43. Explained another way,

> "An assault is an attempt to commit a battery, which is an unlawful touching; a touching may be unlawful because it was neither legally consented to nor otherwise privileged, and was either harmful or offensive." See R. Perkins, Criminal Law, ch. 2, s 2.A.1, at 107-08 (2d ed. 1969); 6 Am.Jur 2d. Assault and Battery, ss 5, 10 (1963).

State v. Humphries, 21 Wn. App. 405, 408-09, 586 P.2d 130

(1978). (*citing State v. Garcia*, 20 Wn. App. 401, 403-04, 579 P.2d 1034 (1978)).

Forty years ago Division One held that a jury instruction was correct where it defined an assault by spitting if the act was both "intentional and offensive". *Humphries*, 21 Wn. App. According to 6 Am. Jur. 2d. Assault and Battery, ss 5, 10 (1963), an assault by spitting also requires the state to prove that the defendant "knowingly touch[ed] another person with the intent to injure, insult, or provoke". Id. Accordingly, spitting is not an assault per se. *Humphries*, 21 Wn. App. at 409.

The issues in this case are (1) whether the state proved beyond a reasonable doubt that Gueye intended to injure, insult or provoke the bus driver; (2) whether the act of spitting in this case was done with unlawful force; and (3) whether the spitting was offensive.

c. Insufficient Evidence Spitting Offensive.

In 1872, under the civil tort laws in Illinois, spitting was an outrage. *Alcorn v. Mitchell,* 63 Ill. 553-54 (1872). However, in this case, in the criminal setting, there was no evidence that spitting

was offensive to an ordinary person. RCW 9A.36.031(1)(b). Ms. Kerrigan, arguably, an ordinary person, did not consent to be spat upon. However, there was no testimony that she was offended, or in any manner upset by Gueye's behavior. She merely testified that Gueye spat upon her twice. RP 51-52.

Officer Strowzewski also arguably an ordinary person, seemed to understand that Gueye was harmless when he simply described the generic act of being spat upon as "nothing pleasant". RP 45. This mild descriptor did not express outrage or offense, rather, it implied that being spat upon was just part of the job.

This evidence also underscores the lack of evidence of an intent to injure, insult or provoke. Security officer Gainey explained that he initially investigated Gueye for a welfare check because he was lying on the floor with his shoes off. RP 30-31. Gainey explained that Gueye struggled to wake up and identify himself, implying that he was perhaps intoxicated or impaired. RP 35.

Gueye was on the ground in the Tacoma Dome Bus Station oblivious to his surroundings. He ranted and raved and walked away when told to do so. His actions on the bus were not pleasant,

but the state did not prove intent to assault or offense by the act of spitting alone, rather than an expression of frustration or an incoherent, uncontrolled accident.

Under *Houston-Sconiers*, 188 Wn.2d at 15, the evidence viewed in the light most favorable to the state does not permit an inference that the act of spitting in this case was offensive. The remedy is reversal and dismissal with prejudice. *Smith* I, 155 Wn.2d at 505.

d. No Evidence Spitting Committed With Unlawful Force.

Spitting **may** involve unlawful force, but this is an element the state must prove and not merely allege. RCW 9A.36.031(1)(b). There was no evidence in this case that the spitting was an act done with unlawful force or that an ordinary person would consider it an act of unlawful force. The state simply alleged that spitting was an assault without actually proving that it was an act done with unlawful force that was offensive to an ordinary person. Id.

Under *Houston-Sconiers*, 188 Wn.2d at 15, the evidence viewed in the light most favorable to the state does not permit an

inference that the act of spitting in this case was an act done with unlawful force. The remedy is reversal and dismissal with prejudice. *Smith* I, 155 Wn.2d at 505.

2. THE STATE FAILED TO PROVE THAT GUEYE WAS GUILTY OF CRIMINAL TRESPASS IN THE SECOND DEGREE WHEN HE WAS OBSERVED WITHIN TWENTY MINUTES OF BEING CIVILLY EXCLUDED FROM THE PUBLIC BUS STATION.

The state failed to prove that Gueye committed the crime of criminal trespass by remaining unlawfully near the Link Station, within 20 minutes of having been denied service on Pierce County Transit.

A person commits criminal trespass in the second degree as follows:

> (1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.
>
> (2) Criminal trespass in the second degree is a misdemeanor.

RCW 9A.52.080.

The standard of review for sufficiency of the evidence set forth in the first argument applies equally to this argument. *Winship*, 397 U.S. at 364; *Houston-Sconiers*, 188 Wn.2d at 15 (*citing Salinas*, 119 Wn.2d at 201).

In this case, to support the conviction the state was required to prove: (1) that Gueye knowingly entered or remained unlawfully (2) in or upon the premises of another (3) under circumstances not constituting first degree criminal trespass. RCW 9A.52.080(1).

The question here is whether the state proved that Gueye remained unlawfully in or upon the excluded premises.

a. Insufficient Evidence Gueye Knowingly Entered or Remained Unlawfully on Excluded Premises: The Bus.

When Gueye entered the bus, he seemed unaware that he was not permitted to ride the bus and left when that he was denied service. RP 52. The state could not prove that Gueye knowingly entered an excluded place because the state did not offer the civil exclusion into evidence and the testimony did not provide the precise nature of the exclusion. Rather, for the first time, the bus driver informed Gueye that he was denied service. RP 52. Gainey

explained to the jury that “it's a civil thing to say, pretty much -- more or less, it says you can't be on transit property for a certain amount of days.” RP 35.

Under *Houston-Sconiers*, 188 Wn.2d at 15, the evidence viewed in the light most favorable to the state does not permit an inference that Gueye knowingly entered or remained on the bus after being notified that he was denied service. The remedy is reversal and dismissal with prejudice. *Smith* I, 155 Wn.2d at 505.

b. Insufficient Evidence Gueye Remained Unlawfully on Excluded Premises: Area Near Link Station.

Here the testimony indicated that Gueye left the Tacoma Dome Bus Station and was later seen near a Link Station owned by Pierce County. There was no testimony that the Link Station was part of the Tacoma Dome Bus Station, but there was testimony that this property was owned by Pierce County Transit. RP 51, 55. The state did not introduce into evidence the civil exclusion but rather limited testimony to a single officer describing the area where Gueye was arrested as follows:

Well, we were looking for him. He was last

> seen walking into the parking garage, and then I found him up on another level near the Link station sitting down.
> Q: And who owns that property?
> A: Pierce Transit owns the property.

RP 55. There was no evidence that the civil exclusion notified Gueye that he was prohibited from sitting near the Link station.

The Tacoma Dome Transit Station is by definition a public place. https://www.piercetransit.org/about-pierce-transit. "Founded in 1979, Pierce County Public Transportation Benefit Area Corporation (Pierce Transit) is a nationally recognized leader in the public transportation industry." Id.

When the exclusion area is a public place, RCW 9A.52.010(2) requires the area to be clearly posted. It is also a defense to this charge where the area in question is a public place. RCW 9A.52.090.

> (2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises;

Id.

Here, Gueye does not assert that he was entitled to this defense, but rather raises the requirement that the area must be

adequately posted to give notice to those excluded. Id.

There was no evidence of any positing that the Link Station area where Gueye was sitting was part of the Tacoma Dome Bus Station that Gueye was excluded from. And there was no evidence that Gueye was excluded from this area. The bus driver told Gueye that he was "denied service for the day". RP 52. This notified Gueye that he could not ride the bus, but being denied service is not the same as exclusion from all Pierce County transit facilities.

Gueye argues that the state failed to prove that he was properly notified that he was prohibited from sitting near the Link Station because there was no evidence that this area was posted as part of the Tacoma Dome Station, and there was no evidence that the civil exclusion included this area.

The state failed to prove beyond a reasonable doubt that Gueye committed criminal trespass under RCW 9A.52.080(1).

c. Time Frame

There is no apparent time frame for a criminal trespass charge, but if a person is outside the premises from which they have been excluded within minutes of the exclusion, it is not

reasonable to believe that the person is committing a criminal trespass.

There was no evidence presented of the vastness of the Tacoma Dome Station. There was also no evidence presented that the area near the Link Station was part of the Tacoma Dome Station. Gueye was also asleep when civilly excluded, and he was difficult to understand. RP 41-42. There was no evidence that he was intoxicated, but the report from DOC indicated that Gueye has significant drug and alcohol abuse issues which suggest that he was likely impaired. CP 53-57.

Gueye was observed walking towards a parking garage and later located outside the Tacoma Dome station, sitting near the Link Station. A person cannot have committed criminal trespass if they are leaving the excluded area, but due to their condition, had to rest for a moment on the way out.

Under these facts, the state failed to prove beyond a reasonable doubt that Gueye knowingly remained unlawfully in the excluded place. This charge must be reversed for insufficient evidence. *Smith I*, 155 Wn.2d at 505.

3. GUEYE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO REQUEST A LESSER INSTRUCTION ON THE MISDEMEANOR "UNLAWFUL TRANSIT CONDUCT".

a. Denied Right to Lesser Included Offense Instruction.

Gueye was denied his statutory right to a lesser instruction on unlawful transit conduct, a misdemeanor. A defendant has a statutory right to have lesser included offenses presented to the jury. RCW 10.62.006. A lesser included offense instruction is justified if (1) all the elements of the lesser offense are necessary elements of the charged offense (the legal prong), and (2) the evidence supports an inference that the lesser crime was committed (the factual prong). *State v. Stevens*, 158 Wn.2d 304, 310, 143 P.3d 817 (2006).

To convict the defendant of the crime of assault in the third degree in this case, each of the following elements of the crime must be proved beyond a reasonable doubt that Gueye assaulted a transit driver. RCW 9A.36.031.

The term assault itself is not statutorily defined so Washington courts apply the common law definition. Washington recognizes three common law definitions of assault: (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm. *Clark v. Baines,* 150 Wn.2d 905, 909 n. 3, 84 P.3d 245 (2004).

For purposes of this case, the definition of assault that applies is an unlawful touching with criminal intent. To commit the crime of unlawful transit conduct the must prove in relevant part:

> (1) A person is guilty of unlawful transit conduct if, while on or in a transit vehicle or in or at a transit station, he or she knowingly:
> …..
>
> (e) Spits, expectorates, urinates, or defecates, except in appropriate plumbing fixtures in restroom facilities;

RCW 9.91.025.

Under *Stevens*, Gueye meets both the legal and factual prongs in this case because as charged, the act of spitting constituted the assault and because the spitting occurred in a

transit vehicle, under the legal prong, Gueye could not commit the assault without also committing this offense. *Stevens*, 158 Wn.2d at 310. For the same reason, Gueye meets the factual prong because the act of spitting on a transit bus constitutes unlawful transit conduct under RCW 9.91.025. *Stevens*, 158 Wn.2d at 310.

The evidence also suggested that due to Gueye's disorientation he was unable to form the intent to assault because he was hard to understand and difficult to wake. RP 35. Also, the bus driver did not express and offense at having been spat upon. RP 51-52.

This evidence suggests that Gueye only committed the lesser offense to the exclusion of the assault, which further mandates proposing the lesser instruction. *State v. Fernandez-Medina*, 141 Wn.2d 448, 455, 6b P.3d 1150 (2000)(the evidence must raise an inference that *only* the lesser included/inferior degree offense was committed to the exclusion of the charged offense.)

The Court in Stevens only required evidence that the lesser was committed, not that it was the only crime committed. *Stevens*, 158 Wn.2d at 310. Regardless, it was error to fail to request the

lesser instruction because the evidence raised the inference that Gueye committed only the lesser offense. *Fernandez-Medina*, 141 Wn.2d at 455.

b. Ineffective Assistance of Counsel.

Gueye was denied his right to effective assistance of counsel by counsel's failure to request a lesser included offense instruction to assault in the third degree as charged in this case.

The Sixth Amendment to the United States Constitution and Wash. Const. art. I, § 22 guarantee a criminal defendant the right to effective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). The Court reviews ineffective assistance of counsel claims de novo. *State v. Wooten,* 178 Wn.2d 890, 895, 312 P.3d 41 (2013).

To prevail on an ineffective assistance of counsel claim, the defendant must show that defense counsel's representation was deficient and that the deficient representation prejudiced him. *Grier*, 171 Wn.2d at 32-33. Failure to establish either prong is fatal to an ineffective assistance of counsel claim. *Strickland v.*

Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Counsel's performance is deficient if it falls below an objective standard of reasonableness, and there is "'a strong presumption that counsel's performance was reasonable.'" *Grier*, 171 Wn.2d at 33. (*quoting State v. Kyllo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)).

To show prejudice, Gueye must show a reasonable possibility that, but for counsel's purportedly deficient conduct, the outcome of the proceeding would have differed. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

Failure to request a lesser included jury instruction can constitute ineffective assistance of counsel where trial counsel unreasonably and prejudicially pursued an "all or nothing" defense against the charged crimes rather than propose lesser included instructions. *State v. O'Connell,* 137 Wn. App. 81, 95, 152 P.3d 349 (2007).

In *Smith II,* the defendant was charged with animal cruelty in the first degree, the evidence supported the crime of animal cruelty

in the second degree, but counsel did not request this lesser instruction. *Smith* II, 154 Wn. App. at 276. This Court held that "defense counsel's all or nothing strategy was not a legitimate trial tactic and constituted deficient performance because he presented evidence to call into question the State's theory on starvation, not the entire crime *Smith* II, 154 Wn. App. at 278.

In *State v. Ward*, 125 Wn. App. 243, 250, 104 P.3d 670 (2004) (*abrogated on different grounds in Grier*, 171 Wn.2d at 35)(error to use of three prong test rather than *Strickland* test), the Court held that counsel's decision to pursue an all or nothing defense was unreasonable because it exposed the defendant to an unreasonable risk that the jury would convict on the only option presented. Id. The Court also considered the difference in penalties between the charged offense and the lesser included offense in determining counsel's performance prejudiced Ward. *Ward*, 125 Wn. App.at 249-50.

Similarly, *in State v. Pittman*, 134 Wn. App. 376, 387-89, 166 P.3d 720 (2006) (*abrogated on other grounds in Grier*, 171 Wn.2d at 17), counsel's performance prejudiced the defendant where

counsel failed to request the lesser included offense instruction where the defendant committed a crime similar to the one charged but the jury had no option other than to convict or acquit. *C.f. State v. Hassan*, 151 Wn. App. 209, 211 P.3d 441 (2009)(Distinguished *Ward* on grounds that Hassan knowingly assumed risk and held counsel's decision not request an instruction on a lesser included offense was not ineffective assistance of counsel because it was a legitimate trial strategy to obtain an acquittal.)

Here defense counsel either consciously or unwittingly chose an all or nothing approach. Regardless, counsel should have proposed the misdemeanor offense "unlawful transit conduct" because it meets both the legal and factual prong under *Stevens*, 158 Wn.2d at 310.

Counsel's "all or nothing strategy" cannot be considered a legitimate trial tactic because he presented evidence to call into question the state's theory on the assault, not the act of spitting. This left the jury with the difficult choice to either convict Gueye of assault or to let him go free despite evidence of some culpable

behavior. *State v. Smith*, 154 Wn. App. 272, 278, 223 P.3d 1262 (2009) (Smith II).

Defense counsel's decision not to request a lesser instruction constituted deficient, prejudicial performance because the instruction was legally required under the legal and factual prongs. And if counsel requested the lesser instruction, the court would have given the instruction.

The jury here also rejected both charges of felony harassment indicating it did not believe that Gueye was making real threats. This suggests that the jury would also have rejected the assault charge if it could have convicted on the lesser offense. *Stevens*, 158 Wn.2d at 310; *Reichenbach*, 153 Wn.2d at 130.

Gueye was also prejudiced because here as in *Ward*, the penalty for the misdemeanor is significantly less than for a felony. *Ward*, 125 Wn. App.at 249-50

The remedy is to remand for a new trial. *Smith* II, 154 Wn. App. at 278-79.

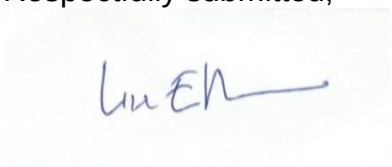
D. CONCLUSION

Khadim Gueye respectfully requests this Court reverse his

convictions for insufficient evidence. In the alternative, Gueye requests this Court reverse and remand for a new trial based on denial of his right to effective assistance of counsel.

DATED this 5th day of July 2017.

Respectfully submitted,



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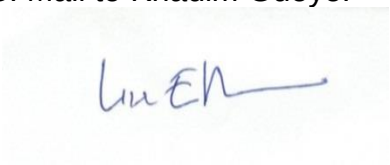
Attorney for Petitioner

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor at pcpatcecf@co.pierce.wa.us and Khadim Gueye/DOC#388245, Stafford Creek Corrections Center, 191 Constantine Way, Aberdeen, WA 98520 a true copy of the document to which this certificate is affixed, on July 5, 2017. Service was made electronically to the prosecutor and via U.S. Mail to Khadim Gueye.



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